

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

CASE NO. 4:09-CR-00072-BR

UNITED STATES OF AMERICA,        )  
    )  
    )   **DEFENDANT'S MOTION TO**  
    )   **STRIKE UNTIMELY**  
vs.                                    )   **OBJECTIONS TO**  
    )   **PRESENTENCE REPORT**  
JOHN KENT COLVIN        )

Defendant John Kent Colvin, through counsel, moves the Court pursuant to Local Rule 32.2 to strike as untimely the Government's objections to the presentence report. In support of this Motion, Colvin shows the Court the following.

1. On 1 November 2010, the United States Probation Office served the draft of Colvin's presentence report.
2. Local Rule 32.2(c) prescribes that within fourteen days after disclosure to the defendant of the presentence investigation report, "the parties shall communicate, in writing, to the probation officer objections to any material information, sentencing classifications, guideline ranges, and policy statements contained in or omitted from the report." Local Criminal Rule 32.2(c) (emphasis added). The rule further provides that the Court may conduct a show cause

hearing and/or disallow objections where such objections are not timely filed. *See id.*

3. The United States did not comply with Local Rule 32.2(c). The United States sent a letter to the Probation Office on 20 December 2010, forty-nine days after service of the draft presentence report, stating multiple objections to the presentence report.

4. The United States twice, the second time over Colvin's objections, sought and secured continuances of Colvin's sentencing hearing. In those motions, the United States made no request for an extension of the time to serve objections to the draft presentence report. Thus, the Court did not grant leave to the United States to submit objections to the presentence report after the deadline prescribed by Rule 32.2.

5. Counsel for Colvin has advised counsel for the United States of the intent to file this Motion. The United States was unwilling to state a position on the Motion in advance of its review of the Motion.

For the foregoing reasons, defendant John Kent Colvin respectfully requests that the Court enter an order striking the Government's objections to the presentence report.

This the 22nd day of December, 2010.

ELLIS & WINTERS LLP

/s/ Paul K. Sun, Jr.

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*Attorney for Defendant John Kent Colvin*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Defendant John Kent Colvin filed his Motion to Strike Untimely Objection to Presentence Report with the clerk of court using the CM/ECF system which will send notice of the filing to the United States of America via its attorney, Clay Wheeler.

This the 22nd day of December, 2010.

/s/ Paul K. Sun, Jr.

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